

ARTICLE 60-02

RULES OF PRACTICE AND PROCEDURE

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60-02-01-01. Scope. The provisions of this article shall apply to all hearings held by the commissioner for the purposes of adjudicating the rights of parties under North Dakota Century Code chapter 4-35. This article shall provide procedures in addition to or in explanation of those procedures provided by North Dakota Century Code chapters 4-35 and 28-32.

General Authority: NDCC 4-35-06, 28-32-02

Law Implemented: NDCC 4-35-15, 28-32-02

60-02-01-02. Liberal construction. This article shall be liberally construed in order to secure just, speedy, and inexpensive determination of the issues presented.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

60-02-01-03. Suspension of article. The commissioner or any hearing officer shall have the right, upon either the commissioner's or hearing officer's own motion or the motion of any party, to suspend the operation and effect of this article

or any portion thereof, whenever the public interest or the interests of any party to a proceeding shall not be substantially prejudiced by such suspension.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

60-02-01-04. Definitions. As used in this article, the following words shall have the meaning given to them below, unless otherwise made inappropriate by context:

1. "Certification" means a private applicator's certification granted under the provisions of North Dakota Century Code section 4-34-14.
2. "Commissioner" means the North Dakota commissioner of agriculture.
3. "Department" means the North Dakota department of agriculture.
4. "Hearing officer" or "officer" means the person appointed by the board to call and conduct a hearing.
5. "License" means a commercial applicator or dealer license issued under the provisions of North Dakota Century Code section 4-35-09 or 4-35-12.
6. "Order" means any written command or direction made by the board as provided by law.
7. "Person" means any real person, county, municipality, or other political subdivision, department, agency, or commission, any public or private corporation, any partnership, association, or other organization, any receiver, trustee, assignee, or other legal entity, other than a court of law, or other legal representative of the foregoing but does not include the board.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

60-02-01-05. Case numbers and title. Each matter coming formally before the commissioner for hearing will be known as a case and shall be given a docket number and title, descriptive of the subject matter. Such number and title shall be used on all papers in the case, and as far as possible, any communication to the commissioner in any particular case shall bear the number of the case.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

60-02-01-06. Personal appearances. Participants may appear in any proceeding in person or by an attorney or other representative qualified under subsection 3 of section 60-02-01-07. An individual may appear in the individual's

own behalf, a member of a partnership may represent the partnership, a bona fide officer or duly authorized employee of a corporation, association, or group may represent the corporation, association, or group, and an officer or employee of a state agency, a department or political subdivision of the state, or other governmental authority may represent the state agency or the department or the political subdivision of the state or other governmental authority in any proceeding.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

60-02-01-07. Practice before the commissioner.

1. **Person in own interest.** Any person may appear before the commissioner in the person's own right if the person has a bona fide interest in the subject matter of the proceeding.
2. **Attorneys.** Attorneys at law who are admitted to practice before the courts of the state of North Dakota may represent any party to a proceeding. Any member of the bar of another state may be permitted by the commissioner to appear in and conduct a case or proceeding while retaining residence in another state.
3. **Other persons.** Any other person who shall file proof to the satisfaction of the commissioner that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the commissioner.
4. **Rules of conduct.** All persons appearing before the commissioner must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

60-02-01-08. Parties.

1. **Complainant.** Persons who complain of any act or omission in violation of any statute or regulation shall be styled complainants.
2. **Intervenor.** Persons petitioning to intervene when admitted as a participant to a proceeding shall be styled intervenors. Admission as an intervenor shall not be construed as recognition by the commissioner that such intervenor might be aggrieved by any order of the commissioner in such proceeding.
3. **Parties.** Any person whose legal rights, duties, or privileges may be determined in the case for which the hearing may be held shall be a party. When a hearing is held pursuant to a request for a hearing, the person making the request shall be a party. The commissioner shall be

a party in any action to enforce any regulation, statute, or other of the commissioner. Any person who has properly intervened in a case shall be a party.

4. **Petitioner.** Any person seeking reconsideration, as provided by law, of any administrative action taken pursuant to law and this article shall be styled the petitioner.
5. **Respondent.** Any person against whom any complaint is filed or order issued under this article shall be styled the respondent.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

60-02-01-09. Investigation on commissioner's own motion. The commissioner may at any time, upon the commissioner's own motion, or upon the complaint of any person, institute investigations and order hearings in any thing done by any person which the commissioner may believe is in violation of the law or any regulation or order of the commissioner. The commissioner may secure and present such evidence as it may consider necessary or desirable in any proceeding in addition to the evidence presented by any other party.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-08

60-02-01-10. Computation of time.

1. In determining the day upon which an answer must be served pursuant to North Dakota Century Code section 28-32-05, the day of the hearing and the last day upon which an answer may properly be received shall not be included in computing the required three-day time period. If the day upon which the answer is due falls on a Saturday, Sunday, or legal holiday, the answer shall be due on the preceding business day.
2. In computing any period of time prescribed or allowed by this article, other than that time period set out in subsection 1, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Sundays and holidays shall be excluded in the computation.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

60-02-01-11. Service. For the purposes of this article, service or filing shall be deemed to have occurred upon actual receipt of the document served or filed.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05

60-02-01-12. Record. Unless any party demands otherwise at least ten days prior to the date of hearing, a written summary record or tape recording of the proceeding will be made and filed. If demanded, the commissioner shall cause a verbatim transcript to any proceedings to be made at the expense of the demanding parties. The time period required herein shall be computed, as nearly as practicable, by that method specified in section 60-02-01-10.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-12